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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

TIMOTHY MELLON, a Wyoming resident,)
)
)
Plaintiff,)
)
v.) Case No. 13 CV 118-S
)
THE INTERNATIONAL GROUP FOR)
HISTORIC AIRCRAFT RECOVERY, a)
Delaware non-profit corporation and)
RICHARD E. GILLESPIE,)
)
Defendants.)

**DEFENDANTS' MOTION IN LIMINE AS TO PLAINTIFF'S DESIGNATION OF
MULTIPLE EXPERT WITNESSES**

COME NOW Defendants The International Group for Historic Aircraft Recovery (“TIGHAR”) and Richard E. Gillespie (collectively “Defendants”) by and through their undersigned counsel John A. Masterson and Alaina M. Stedillie of Lewis Roca Rothgerber, LLP

and William J. Carter of Dean & Carter, PLLC, and submit this *Motion in Limine as to Plaintiff's Designation of Multiple Expert Witnesses.* Pursuant to U.S.D.C.L.R. 7.1(b)(1)(A), the undersigned affirm that they have conferred with opposing counsel before filing this Motion. All counsel met in good faith, and in person, to discuss motions in limine, but no compromise could be reached.

On February 28, 2014, and pursuant to this Court's October 10, 2013 Order and U.S.D.C.L.R. 26.1, Plaintiff designated four expert witnesses, along with reserving the right to call Defendants' experts or call rebuttal experts: John Jarrell, Ph.D., Graham Forrester, Ph.D., Jay M. Vincelli, M.Sc., and Fatih Calakli. All four work for Materials Science Associates, LLC in some capacity or another. Each of these experts will testify that images seen in the 2010 video footage are "consistent with" parts from a Lockheed Electra Model 10 aircraft, and, "in the absence of an alternative explanation for the source of these objects, we conclude that they *are likely to* have originated from" the aircraft. Jarrell and Forrester Rep. p. 3 (emphasis added).¹

While Plaintiff attempts to distinguish between his experts, all four of them worked on the same project and provided expert reports that set forth nearly identical introductions, factual statements, and conclusions. Indeed, the reports frequently used the term "we," and the reports note that the experts worked together as a "team." Further, both Dr. Jarrell and Dr. Forrester signed off on the same report. Based on the contents of the reports, as well as their conclusions, it is likely that all experts will testify as to the same evidence, areas and issues, and will most certainly provide the same or similar conclusions. As such, testimony from all four experts would be duplicative and cumulative, as well as constitute a waste of time. *See generally*, F.R.E. 403.

¹ This report is in the record as Exhibit A to Document 37.

Further, Rule 26.1(g)(1) of the U.S.D.C.L.R. provides:

(g) Discovery of expert Testimony

- (1) The parties are limited to the designation of one expert witness to testify for each particular field of expertise.

In light of this rule, it appears that Plaintiff's expert designation is redundant; Plaintiff has designated four experts to testify about and submitted multiple expert reports to address the same work, the same methods, and the same conclusions. In accordance with U.S.D.C.L.R., the Defendants would ask this Court to direct Plaintiff to elect one expert from the "team" that produced the reports. In the alternative, Defendants would ask that this Court strike all but one of the experts. Limiting the expert testimony will avoid cumulative testimony and will save time.

WHEREFORE, Defendants TIGHAR and Mr. Gillespie respectfully request that this Court enter an Order in Limine directing the Plaintiff to either elect between its four experts or, in the alternative, strike all but one expert, and for any further and just relief this Court deems appropriate.

DATED this 17th day of July, 2014.

THE INTERNATIONAL GROUP FOR HISTORIC
AIRCRAFT RECOVERY and RICHARD E.
GILLESPIE

By _____ /s/
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, a true and correct copy of the foregoing was electronically served upon all parties registered as CM/ECF users in this case via the Court's CM/ECF electronic mail service including the following:

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